FILED
FEB 26 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 39

PAUL WILLIAMS and LORENA WILLIAMS,
husband and wife, *Petitioners,*

v.

HUGH LEE, doing business as GANADO TRADING POST.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

NORMAN M. LITTELL,
1824-26 Jefferson Place, N. W.,
Washington 6, D. C.
Counsel for the Petitioners.

FREDERICK BERNAYS WIENER,
Suite 815 Stoneleigh Court,
1025 Connecticut Avenue, N. W.,
Washington 6, D. C.,

CHARLES J. ALEXANDER,
1824-26 Jefferson Place, N. W.,
Washington 6, D. C.,

LAURENCE DAVIS,
1410 North Central Avenue,
Phoenix, Arizona,
Of Counsel.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Constitutional, statutory, and regulatory provisions involved	2
Statement	3
How the federal question was raised	5
Reasons for granting the writ	5
Conclusion	12
Appendix A—Opinion below	A1-A9
Appendix B—Judgment below	A9-A10
Appendix C—Excerpts from the record showing raising of the federal question	A10-A16
Appendix D—Constitutional, statutory, and regulatory provisions involved	A16-A19
Appendix E—Veto of 1949 Navajo-Hopi rehabilitation bill because of jurisdictional feature	A19-A26
Appendix F—Amended judgment as to costs	A26

AUTHORITIES

CASES:

Begay v. *Miller*, 70 Ariz. 380, 222 P. 2d 624	8
Brader v. *James*, 246 U.S. 88	6
Creek County v. *Seber*, 318 U.S. 705	6
Denetclaw, In the Matter of Ted, for a writ of Habeas Corpus, Ariz. Sup. Ct., No. 6519, Jan. 28, 1958	9
Dick v. *United States*, 208 U.S. 340	10
Draper v. *United States*, 164 U.S. 240	9
Harrison v. *Laveen*, 67 Ariz. 337, 196 P. 2d 456	8
Langford v. *Monteith*, 102 U.S. 145	9
New York ex rel. Ray v. *Martin*, 326 U.S. 496	9
State of New Mexico v. *Begay*, N.M. Sup. Ct., No. 6292, Jan. 22, 1958	9
Surplus Trading Co. v. *Cook*, 281 U.S. 647	9
Thomas v. *Gay*, 169 U.S. 264	8

Page

Tiger v. *Western Investment Co.*, 221 U.S. 286 6
Tinker v. *Midland Valley Mercantile Co.*, 231 U.S. 681 11
United States v. *43 Gallons of Whisky*, 93 U.S. 188 . 10
United States v. *Holliday*, 3 Wall. 407 10
United States v. *Kagama*, 118 U.S. 375 6
United States v. *McBratney*, 104 U.S. 621 9
United States v. *Nice*, 241 U.S. 591 6
United States v. *Sutton*, 215 U.S. 291 9
Utah & Northern R. Co. v. *Fisher*, 116 U.S. 28 9
Winton v. *Amos*, 255 U.S. 373 6
Worcester v. *Georgia*, 6 Pet. 515 6

CONSTITUTIONAL PROVISIONS:

Constitution of the United States:
Art. I, Sec. 8, Cl. 3 .....10, A16
Constitution of Arizona:
Art. 20, Fourth 8, A16

STATUTES:

Act of June 20, 1910, c. 310, 36 Stat. 557, Sec. 20 8
Act of June 14, 1934, c. 521, 48 Stat. 960 3
Act of April 19, 1950, c. 92, 64 Stat. 44 8
Act of Sept. 13 1950, c. 947, 64 Stat. 845 .....7, A17
Act of Aug. 15, 1953, c. 505, 67 Stat. 588:
Sec. 4 7
Sec. 6 .....8, A20
Sec. 7 .....8, A20
Act of Aug. 24, 1954, c. 910, 68 Stat. 795, Sec. 2 ...7, A18
25 U.S.C. § 233 7
25 U.S.C. § 262 .....10, 12, A18
25 U.S.C. §§ 631-640 8
28 U.S.C. § 1360 .....7, A18

MISCELLANEOUS:

25 C.F.R. 277.1-277.28 11
25 C.F.R. 277.13 .....12, A20
25 C.F.R. 277.16 11
25 C.F.R. 277.17 .....11, 12, A20
95 Cong. Rec. 13659-13660, 14784-14785 7
Sec. 9 of S. 1407, 81st Cong., 1st sess. 7
Sen. Doc. 119, 81st Cong. 1st sess. 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

PAUL WILLIAMS and LORENA WILLIAMS,
husband and wife, *Petitioners,*

v.

HUGH LEE, doing business as GANADO TRADING POST.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

PAUL WILLIAMS and LORENA WILLIAMS, your petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Arizona, entered in the above-entitled case on January 7, 1958.

OPINIONS BELOW

The opinion of the Arizona Supreme Court (*infra*, Appendix A, pp. A1-A9) has not yet been reported. The opinion of the Superior Court of Arizona for Apache County (R. 65-70) appears in operative part in Appendix C (*infra*, pp. A12-A15).

JURISDICTION

1. The judgment of the Supreme Court of Arizona was entered on January 7, 1958 (*infra*, Appendix B, pp. A9-10). It is final by its terms.*

2. The federal question was raised as indicated at p. 5, *infra*. The excerpts from the record showing the raising of the federal question are set out in Appendix C, *infra*, pp. A10-A16.

3. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether the courts of Arizona have jurisdiction of an action brought against members of the Navajo Indian Tribe by a non-Indian in respect of a transaction arising within the boundaries of the Navajo Indian Reservation in Arizona.

2. Whether, where a non-Indian trader enters and trades on an Indian reservation pursuant to federal regulations, which declare that he extends credit to Indians only at his own risk, the courts of Arizona have jurisdiction to determine the claim of such non-Indian trader against Indians in respect of a purchase on credit.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The federal and state constitutional provisions, statutes, and regulations that are involved in this case are set forth in Appendix D, *infra*, pp. A16-A21.

---

* It was amended as to costs on February 13, 1958 (*infra*, Appendix F, p. A26).

STATEMENT

The facts out of which the present controversy arises are not in dispute and were, in large measure, stipulated (R. 72-75).

Petitioners, husband and wife, are duly enrolled members of the Navajo Tribe and citizens of the United States, and at all times here material resided within the boundaries of that portion of the Navajo Indian Reservation lying in Arizona, as defined by the Act of June 14, 1934, c. 521, 48 Stat. 960 (R. 72-73).

Respondent, a non-Indian, operated a general merchandise store known as the Ganado Trading Post, on land that is a part of the Navajo Reservation, pursuant to permission granted by the Secretary of the Interior and the Commissioner of Indian Affairs (R. 72, 73) under the authority of what is now 25 U.S.C. § 262 (*infra*, p. A18). Among the regulations for trade with Indians promulgated under the cited statute is 25 C.F.R. 277.17 (*infra*, pp. A20-A21), entitled "Credit at trader's risk," which provides *inter alia* that "A trader may extend credit to Indians, but such credit will be at the trader's own risk."

At petitioners' request, respondent sold them merchandise of the value of $361.22, on credit (R. 72). Following demands for payment, the present suit was brought in the Superior Court of Arizona for Apache County. Thereafter, petitioners paid $280 on account, leaving $81.22 still owing. All of the sales and deliveries of the merchandise, and all of the payments thereon, were made within the boundaries of the Navajo Indian Reservation. (R. 72-73.)

The summons in the present case was served on petitioners within the boundaries of the Navajo Indian

Reservation, and within the exterior boundaries of Apache County as defined by Arizona law (R. 73).

At the time of commencing the action, respondent procured a writ of attachment from the clerk of the Superior Court directing the sheriff to attach a band of sheep belonging to petitioners (R. 5). The sheriff duly seized these sheep, along with others alleged to be not owned by petitioners, inside the Navajo Reservation, on reservation land (R. 73, 6, 12). After the sheep had been in custody for some months, some were sold by the sheriff at respondent's trading post on the Navajo Reservation, and the remainder were returned to petitioners (R. 54, 55). The proceeds of the sale were $272, plus $2 advanced by petitioners (R. 56), but the costs of sale amounted to $246.72 (R. 56-57).

Petitioners moved to dismiss the action and to dissolve the attachment because of lack of jurisdiction, on the ground of their membership in the Navajo Tribe and residence on the Navajo Reservation (R. 7). This motion was denied (R. 65-70).

The parties thereafter stipulated the facts and waived further appearance in the Superior Court (R. 72-75). Thereupon the Superior Court entered judgment in favor of respondent in the sum of $82.22 (R. 77, 84), and dismissed the counterclaim (R. 76, 84).

Petitioners appealed to the Supreme Court of Arizona (R. 78), which sustained the jurisdiction of the Superior Court, though holding the attachment and sale illegal (Appendix A, *infra*, pp. A1-A9). Dismissal of the counterclaim, although noted in the statement of points on appeal (R. 85), was not assigned as error in petitioners' brief in the Supreme Court of Arizona.

HOW THE FEDERAL QUESTION WAS RAISED

1. Lack of jurisdiction in the trial court, based on petitioners' membership in the Navajo Tribe, their residence on the Navajo Reservation, and respondent's ownership of a trading post, was raised in a motion to dismiss for want of jurisdiction (R. 7, 9; *infra,* Appendix C, pp. A10-A11).

2. Petitioners' jurisdictional contentions were reasserted in successive stipulations in the trial court (R. 36, 49, 74; *infra,* Appendix C, pp. A11-A12).

3. Petitioners' contention that they were not subject to state jurisdiction as a matter of federal law was considered, discussed, and denied in the opinion of the Superior Court (R. 65-70; *infra,* Appendix C, pp. A12-A15).

4. Petitioners' statement of points on appeal asserted lack of jurisdiction over their persons because of their Indian status and reservation residence, and lack of jurisdiction over the subject matter of the action "because trading with Indians on the Navajo Indian Reservation is governed exclusively by Federal Laws and Federal Laws provide that debts of Indians arising out of such trade are unenforceable" (R. 85; *infra,* Appendix C, p. A16).

5. The opinion of the Supreme Court of Arizona (Appendix A, *infra,* pp. A1-A9) considered, discussed, and denied the foregoing federal claims put forward by petitioners.

REASONS FOR GRANTING THE WRIT

The decision below disregards and runs counter to more than a century of decisions here, ignores legislation by Congress, nullifies valid Federal regulations

governing trade with the Indians, and accordingly opens the door wide to systematic spoliation of the Indian wards of the United States. It is accordingly one of the most important Indian cases to reach this Court in many years.

First. From *Worcester* v. *Georgia,* 6 Pet. 515, decided in 1832, through *United States* v. *Kagama,* 118 U.S. 375, and a host of other cases, down to *Creek County* v. *Seber,* 318 U.S. 705, it has been settled that state law is ineffective to reach Indians except insofar as Congress has specifically and expressly made them subject to such law. And it has further been unquestioned—except for the ruling now sought to be reviewed—that the grant of citizenship to an Indian does not without more render him subject to state law, and that an Indian's citizenship or non-citizenship has no relevance when considering his amenability to state law. *E.g., Tiger* v. *Western Investment Co.,* 221 U.S. 286, 310-316; *United States* v. *Nice,* 241 U.S. 591, 598; *Brader* v. *James,* 246 U.S. 88, 96; *Winton* v. *Amos,* 255 U.S. 373, 391-392; *Creek County* v. *Seber,* 318 U.S. 705, 718.

When Congress considers that a particular tribe of Indians have so far advanced in adaptability as to be able to assume all of the duties of citizenship and to mingle on competitive terms with non-Indians, to the point where the laws of the several states may appropriately be made applicable to them, it has expressed such on intention in clear and unequivocal language.

Thus, in 1950, Congress declared that, effective two years later, "The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or be-

tween one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State." Act of September 13, 1950, c. 947, 64 Stat. 845, 25 U.S.C. § 233 (*infra*, pp. A17-A18).

Similarly, in 1953, Congress provided that in California, Minnesota, Nebraska, Oregon, and Wisconsin—with the exception of one named reservation in each of three states (later amended to reduce the exceptions to two)—the states "shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere in the State." 28 U.S.C. § 1360, added by § 4 of the Act of Aug. 15, 1953, c. 505, 67 Stat. 588, 589, and as subsequently amended by § 2 of the Act of Aug. 24, 1954, c. 910, 68 Stat. 795 (*infra*, pp. A18-A20).

But Congress has never enacted any similar measure in respect of the Navajo Tribe. To the contrary, when Congress in 1949 passed an Act making Navajos (*inter alia*) subject to the laws of the states in which their lands were located, so that "in all cases the jurisdiction of the State, the Federal, and the tribal courts shall be concurrent," the President vetoed the bill, although it provided substantial rehabilitation measures for the tribes affected. Sec. 9 of S. 1407, 81st Cong., 1st sess.; Sen. Doc. 119, 81st Cong., 1st sess., pp. 1-4, 6; 95 Cong. Rec. 13659-13660, 14784-14785 (*infra*, Appen-

dix E, pp. A21-A26). In the following year, a similar act was passed, without the objectionable jurisdictional provisions, and this became law. Act of April 19, 1950, c. 92, 64 Stat. 44, 25 U.S.C. §§ 631-640. It may or may not be significant in the present connection that the court below recently adverted to the foregoing history when it held that the Arizona courts had no divorce jurisdiction over Navajo Indians resident on the Navajo Reservation. *Begay* v. *Miller*, 70 Ariz. 380, 385, 222 P. 2d 624, 627-628.

If Arizona desires to subject Navajo Indians to its laws it may do so, notwithstanding the limitations in the Enabling Act (Sec. 20, Act of June 20, 1910, c. 310, 36 Stat. 557, 569) and in its own Constitution. Art. 20, Fourth (*infra*, pp. A16-A17). For Congress in 1953 consented to the assumption of civil jurisdiction over Indians by any state that undertook to amend its constitution and laws accordingly. Secs. 6 and 7 of the Act of Aug. 15, 1953, *supra*, 67 Stat. at 590 (*infra*, p. A20). Arizona has taken no action pursuant to this consent, no doubt because it is not yet prepared to assume the police and school obligations that the exercise of civil jurisdiction over the Navajos would entail. But until the people of Arizona amend their Constitution pursuant to the Congressional consent of 1953, the courts of Arizona are not free to exercise jurisdiction over any Indians who reside on Indian reservations.

This is not to say that Arizona lacks territorial jurisdiction over the Navajo Reservation. That reservation is within Arizona's boundaries. *Harrison* v. *Laveen*, 67 Ariz. 337, 196 P. 2d 456. Arizona may accordingly tax property owned by a non-Indian within that reservation. *Thomas* v. *Gay*, 169 U.S. 264. An Arizona sheriff could effect valid service of process on a non-

Indian within the reservation where the lawsuit is one between non-Indians. Cf. *Langford* v. *Monteith*, 102 U.S. 145; *Utah & Northern R. Co.* v. *Fisher*, 116 U.S. 28, 31. And the fear of the court below that, if petitioners' "reasoning be sound, a white man could murder another white man on or off an Indian reservation and would be secure from Arizona prosecution so-long as he could remain within the boundaries of a reservation" (Appendix A, *infra*, p. A3), is plainly without foundation, in view of the consistent line of cases to the contrary, from *United States* v. *McBratney*, 104 U.S. 621, through *Draper* v. *United States*, 164 U.S. 240 (cited but mis-stated in the opinion below, *infra*, p. A3), down to *New York ex rel. Ray* v. *Martin*, 326 U.S. 496, all of which hold that a state may punish a non-Indian for an offense committed against another non-Indian within an Indian reservation.*

The principle of the foregoing cases is that a State has jurisdiction over the territory of an Indian Reservation within its boundaries—except in matters concerning Indians. Otherwise stated, jurisdiction over matters not concerning Indians is the extent of Arizona's jurisdiction within the Navajo Reservation. *Utah & Northern R. Co.* v. *Fisher*, 116 U.S. 28; *United States* v. *Sutton*, 215 U.S. 291; *Surplus Trading Co.* v. *Cook*, 281 U.S. 647, 651. The ruling below, which runs counter to that well settled principle, is therefore

---

* Since the date of the decision below, the Supreme Court of Arizona has held that a Navajo Indian cannot be arrested by a state highway patrolman on U. S. Highway 66 where that highway passes through the Navajo Reservation. *In the Matter of Ted Denetclaw for a writ of Habeas Corpus*, No. 6519, decided January 28, 1958. There is no suggestion in the opinion that a non-Indian would be similarly exempt. *Accord, State of New Mexico* v. *Begay*, N. M. Sup. Ct., No. 6292, decided January 22, 1958.

erroneous—and, because it is so fraught with dangerous consequences for the many Indians in Arizona, as well as elsewhere, requires review and rectification by this Court.

Second. But there is another if narrower reason why the ruling below violates established Federal rights. Not only did the Arizona courts lack jurisdiction of petitioners' persons, they also lacked jurisdiction of the subject matter of the present proceeding, which arose out of a commercial transaction on a reservation between Indians and a Federally licensed Indian trader.

Here the source of Federal power is the Commerce Clause (Art. I, Sec. 8, cl. 3; *infra*, p. A16), the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." That power is "exclusive and absolute," "a power as broad and as free from restrictions as that to regulate commerce with foreign nations." *Dick* v. *United States*, 208 U.S. 340, 356; *United States* v. *43 Gallons of Whiskey*, 93 U.S. 188, 194. And "commerce with the Indian tribes, means commerce with the individuals composing those tribes." *United States* v. *Holliday*, 3 Wall. 407, 417.

Pursuant to its power to regulate commerce with Indians, Congress has declared (25 U.S.C. § 262; *infra*, p. A18) that permission to trade with Indians is subject to "such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians."

Respondent availed himself of this permission to trade with petitioners within the Navajo Reservation (R. 72-73, ¶¶ 3, 5), and thereby subjected himself to the

elaborate and rigorous regulations governing such commerce. See 25 C.F.R. 277.1-277.28. And among those regulations, which the Commissioner prescribed "for the protection of said Indians" was one (25 C.F.R. 277.17; *infra*, pp. A20-A21) entitled "Credit at trader's risk," which stated, clearly and unequivocally, that "A trader may extend credit to Indians, but such credit will be at the trader's own risk."

The purpose of this regulation was plain. It was designed to protect an Indian from the consequences of his own improvidence. Cf. *Tinker* v. *Midland Valley Mercantile Co.*, 231 U.S. 681. The trader was amply protected if he sold for cash or if he took pawn pursuant to 25 C.F.R. 277.16, but any sale he made on unsecured credit was unenforceable. The regulation has no other meaning.

The court below said (Appendix A, *infra*, p. A6), "We are clearly of the opinion that the regulation has nothing to do with the power of any court to determine a dispute concerning its application. If in fact the effect is to render the debt unenforceable, it is a proper defense on the merits but does not deprive the court of power to hear the matter." Assuming the premise—which we do only for sake of argument—the result does not follow. For the court below denied the "proper defense" when it affirmed the judgment against petitioners. By so doing it not only ignored and nullified the regulation, it emphasized as well the utter impropriety of permitting state court adjudication of claims by non-Indians against Indians that arise out of trade conducted pursuant to, and only pursuant to Federal permission. The Arizona court's decision on the merits is thus a compelling demonstration of how its asserted jurisdiction over Indians impinges on Fed-

eral rights and jeopardizes Federal protection of tribal Indians.

Third. It is true that the court below held the levy and sale of petitioners' sheep illegal in reliance on another regulation promulgated pursuant to 25 U.S.C. § 262, viz., 25 C.F.R. 277.13 (*infra,* p. A20), to the effect that

> "All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent."

The court below said (Appendix A, *infra,* p. A8), "We interpret this regulation as placing livestock in a special category and prohibiting buying of such property from the Indian without special permits issued by the superintendent." But this narrow view fails adequately to protect petitioners or any other Indians who are haled into state courts in respect of sales made on credit, on the reservation, by a licensed trader, in contravention of 25 C.F.R. 277.17 (*infra,* pp. A20-A21). For under the ruling below, the judgment against petitioners still stands, and it may be enforced by execution levied against other property belonging to petitioners not falling within the regulation concerning livestock. It is not necessary to conjure up imaginary consequences to foresee the havoc that the decision below will wreak upon the hitherto settled Federal administration of Indian affairs, and upon the Indian way of life itself.

CONCLUSION

The decision below is palpably erroneous. It disturbs Indian immunities that for over a hundred years had been well-settled, and threatens the economic survival of the many thousands of Indians who still live on reservations. The present petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

NORMAN M. LITTELL,
1824-26 Jefferson Place, N. W.,
Washington 6, D. C.
Counsel for the Petitioners.

FREDERICK BERNAYS WIENER,
Suite 815 Stoneleigh Court,
1025 Connecticut Avenue, N. W.,
Washington 6, D. C.,

CHARLES J. ALEXANDER,
1824-26 Jefferson Place, N. W.,
Washington 6, D. C.,

LAURENCE DAVIS,
1410 North Central Avenue,
Phoenix, Arizona,

Of Counsel.

FEBRUARY, 1958.

APPENDIX A

OPINION BELOW

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 6172

PAUL WILLIAMS and LORENA WILLIAMS, husband and wife,
Appellants,

v.

HUGH LEE, doing business as GANADO TRADING POST,
Appellee.

Appeal from Superior Court of Apache County
Honorable J. Smith Gibbons, Judge
Judgment Affirmed in Part
and Reversed in Part.

W. E. Ferguson, of Holbrook; Wilson, Compton & Wilson, of Flagstaff; Laurence Davis, of Phoenix, Attorneys for Appellants; and Murray L. Crosse, Field Solicitor, Department of the Interior, Gallup, N. M., Of Counsel.

McQuatters & Stevenson, of Flagstaff, Attorneys for Appellee.

WINDES, *Justice.*

Suit in the superior court of Apache county by Hugh Lee dba Ganado Trading Post against Paul Williams and his wife, Lorena. Plaintiff was operating the Ganado Trading Post on the Navajo Indian reservation under authority given by the Secretary of Interior and Commissioner of Indian Affairs. Defendants are Indians, members of the Navajo tribe and residing on the reservation. Plaintiff operating as such trader sold articles to defendants on credit. There being a balance unpaid, this suit was filed. Service of summons was made upon defendants within the boundaries of the Navajo Indian reservation. At the time of commencing the action writ of attach-

ment was procured and levied upon sheep owned by the defendants. The levy was made upon the reservation.

Defendants moved to dismiss the action upon the ground that the court lacked jurisdiction and filed a counterclaim for wrongful attachment. Judgment was rendered for the plaintiff on his complaint and the counterclaim was dismissed. Defendants bring the matter before us claiming the trial court had no jurisdiction over their persons for the reason that a state officer cannot legally service process upon a Navajo Indian within the boundaries of the reservation and that the superior court has no jurisdiction over the subject matter in that it has no power to enforce debts contracted on the reservation by tribal Indians in the course of dealing with a federally licensed Indian trader. There was no assignment of error nor argument questioning the correctness of the court's dismissal of the counterclaim, consequently there will be no further reference thereto.

The defendants were and are citizens of the United States, 8 U.S.C.A., section 1401, and were and are residents of the state of Arizona. Porter v. Hall, 34 Ariz. 308, 271 P. 411, overruled only as to right of suffrage in Harrison v. Laveen, 67 Ariz. 337, 196 P. 2d 456. In the Hall case this court said:

> "We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical boundaries of the state, and that the exception set forth in our Enabling Act applies to the Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the state of Arizona. * * *"

Defendants contend that under the treaty with the Navajos of June 1, 1868, and federal statutes, 25 U.S.C.A. section 231, state agents may enter upon the reservation only for the purpose of inspection of health and educa-

tional conditions and enforcement of sanitation and quarantine regulations or to enforce compulsory school attendance laws. The contention is probably sound when the subject matter involved is something that is of no concern to the state, something that is clearly within the exclusive jurisdiction of federal authorities. Unless permitted by the federal government, the state would be outside the sphere of its authority in attempting to interfere with the exclusive power of the federal government in administering the affairs of Indians and promoting their education and health. The state does have some degree of sovereignty over Indian reservations. Draper v. U. S., 164 U.S. 240, 17 S. Ct. 107, 41 L. Ed. 419. That case is authority for the proposition that in a case over which the state would have jurisdiction except for the fact that it occurred within the boundaries of an Indian reservation, it would have such jurisdiction after admission of the state to the Union except to the extent that sole and exclusive power over the reservation in the federal government is expressly reserved. Our view is that if the subject matter of the litigation is one that the state court has jurisdiction to try and determine and the federal government has not reserved sole and exclusive jurisdiction over the territory involved, the state officers may enter such territory under the state's sovereign authority and serve the necessary process to enable it to exercise its legitimate jurisdiction. Any other rule would lead to ridiculous results. For illustration, if defendants' reasoning be sound, a white man could murder another white man on or off an Indian reservation and would be secure from Arizona prosecution so long as he could remain within the boundaries of a reservation. A civil dispute between two white traders on a reservation could not be tried for lack of service so long as the defendant remained on the reservation. In other words the state would have territorial jurisdiction without power to exercise it. Such is not and cannot be the law.

Appellant urges that Arizona courts have no jurisdiction to enforce payment against a Navajo Indian of a debt which arose out of his dealing with a federally licensed trader on the reservation. It is not contended that the federal courts have such jurisdiction but, in defendants' motion to dismiss, it is contended that jurisdiction belongs on the reservation in the tribal court and no other. It is argued that the United States has exclusive jurisdiction over civil actions involving Indians except to the extent that Congress has conferred jurisdiction upon the state courts. This is not completely correct. The correct rule concerning the extent of state jurisdiction over Indian reservations is stated in U. S. v. McGowan et al, 302 U.S. 535, 58 S. Ct. 286, 82 L. Ed. 410, as follows:

> "Enactments of the federal government passed to protect and guard its Indian wards only affect the operation, within the colony (reservation), of such state laws as conflict with the federal enactments."

We do not question the authority of the federal government over tribal Indians and its right to deprive the state courts of jurisdiction to try and determine litigation of the nature herein involved, but we think the correct statement of the rule is that enunciated by Prof. Ray A. Brown, an eminent authority on Indian law, in his article, The Indian Problem and the Law, 39 Yale Law Journal, pages 314-315. The rule is stated in the following language:

> "While the theory of tribal allegiance and federal guardianship has served in criminal matters to place the Indian in a special category, such has not generally been the result in matters of civil rights. The Indian, whether tribal and a ward of the government or not, may, *except where specially restricted by act of Congress*, make contracts, acquire and dispose of property, and sue and be sued in the state or federal courts." (Emphasis ours.)

To the same effect, 43 C.J.S., Indians, section 8(b):

> "* * * an Indian may be sued in the state courts in any matter over which the United States has not expressly retained jurisdiction. Where not prohibited by statute, Indians may be sued on contracts or in tort."

Many courts have recognized the right of state courts to assume jurisdiction over disputes between Indians and whites. Swartzel et al. v. Rogers, 3 Kan. 374, was a suit between Shawnee Indians to partition land located on the reservation. After declaring there was nothing to show the property was restricted, the court said:

> "The fact that the contestants are Shawnee Indians, did not deprive the district court nor does it forbid to this court the exercise of jurisdiction either as to parties or subject matter. That the property belongs to Indians is not sufficient to place it beyond the jurisdiction of the state courts; and if the subject matter be within their jurisdiction, the parties, whether Indians or white men, have the right to litigate about it therein."

The case was cited as authority by the United States Supreme Court in the case of Felix v. Patrick, 145 U.S. 317, 12 S. Ct. 862, 36 L. Ed. 719. Stacy v. LaBelle, 99 Wis. 520, 75 N.W. 60, was a suit in the state court against an Indian for a balance due on account for goods, wares and merchandise sold to the Indian by the plaintiff who was an Indian trader on the reservation operating under and by virtue of a license issued by the United States. It was held the state court had jurisdiction. Red Hawk v. Joines, 129 Ore. 620, 278 P. 572, was an action brought by an Indian who was an allottee without final patent on the Umatilla Indian reservation against a white man to replevy cattle taken from the Indian's possession. State jurisdiction was sustained with a very thorough discussion of the problem of jurisdiction over the Indian, his personal property and over the reservation. Bonnett v.

Seekins, 126 Mont. 24, 243 P. 2d 317, was a case where the Indian brought suit against a white to recover rent due under a lease of land held under an allotment. The lease had been approved by the Indian agency. It was held the state court had jurisdiction. To the same effect is Stevenson v. Christie, 64 Ark. 72, 42 S.W. 418, which was a suit by a white man against an Indian on a contract made in Indian territory as the result of the operation by the white man of a mercantile business in the Indian territory.

There are cases such as is before this court that were tried in the state courts wherein jurisdiction was apparently conceded or at least not presented. Tinker v. Midland Valley Mercantile Co., 25 Okla. 160, 105 P. 333. This was a suit by an Indian trader against an Indian on a promissory note which defendant contended was void because it was for credit given in excess of that authorized by statute. The case was reviewed by the United States Supreme Court and reversed but not on jurisdictional grounds. Tinker v. Midland Valley Mercantile Company, 231 U.S. 681, 34 S. Ct. 252, 58 L. Ed. 434.

We are cited to a regulation of the Commissioner of Indian Affairs to the effect that a trader may extend credit to Indians but that such credit will be at the trader's own risk. The argument is advanced that this renders the debt unenforceable in the state court and ousts all courts of jurisdiction to hear the matter. Whether this regulation renders the debt unenforceable is not before us except to the extent that such enforcement may deprive the court of jurisdiction for the reason that the assignment of error in this matter presents only the jurisdictional question. We are clearly of the opinion that the regulation has nothing to do with the power of any court to determine a dispute concerning its application. If in fact the effect is to render the debt unenforceable, it is a proper defense on the merits but does not deprive the court of power to hear the matter.

When the action was commenced a writ of attachment was issued directing the sheriff to attach sheep belonging to defendants and located upon the reservation. The levy was made. Before final disposition of the case plaintiff moved for authority to sell the property and impound the proceeds. In response to this motion defendants moved to quash the attachment and levy upon the ground, among others, that the court had no jurisdiction over the property proposed to be sold. The court ruled adversely to defendants and ordered the property sold. The stock was sold at public auction at the trading post of plaintiff. Costs of sale were $246.72. The final judgment was in the sum of $82.22. Defendants by express assignment contend the court erred in permitting the sale and proceedings under the writ of attachment for the reason that the state court has no jurisdiction to interfere with property of tribal Indians within an Indian reservation.

We believe there can be no serious question that under the commerce clause of the United States constitution and under the right to protect the Indian and his property, the federal government may prescribe the conditions under which the tribal Indian may dispose of or others may acquire his property, while located on the reservation. If there be a federal statute or lawful regulation adopted pursuant to authority of federal statute prescribing restrictions for the buying or selling of an Indian's property on the reservation, a state court has no right nor power to enforce a state law concerning the disposition of such property which conflicts with the federal statute or regulation. U. S. v. McGowan et al, supra.

Pursuant to its power to supervise and control commerce, a federal license is required to trade upon the reservation. The federal statute provided that such trading shall be done only "under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the

protection of said Indians." 25 U.S.C.A., section 262. Among the regulations adopted is the following:

> "All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent." 25 CFR 277.13.

We interpret this regulation as placing livestock in a special category and prohibiting buying of such property from the Indian without special permits issued by the superintendent. We can think of no purpose for the regulation except to protect the Indian in the sale of his livestock by giving the superintendent supervision over the sales. To permit the state law to reach into the Indian reservation and require the sale of his livestock at public sale under execution clashes with the provisions of the foregoing regulation and operates to deprive the superintendent of his power of supervision over sales of Indian property and takes from the Indian the protective cloak of such supervision. We fail to see how such execution sales of livestock may be effected without substituting the state law on execution sale for the reservation law as prescribed by the regulation defining the method of selling Indian livestock. We think such substitution cannot be made and the state law cannot operate under such conditions. The attachment should have been quashed for lack of jurisdiction of the state court to force the sale thereunder.

Plaintiff advances the theory that because the Indians are citizens they must be treated as having been emancipated from government supervision. It is argued that since they enjoy the privileges of citizenship, they must bear the burdens the same as other citizens. The correct rule is that the mere fact Indians have become citizens does not deprive the federal government of the right and power to pass laws and authorize regulations for the protection of Indians as a tribal people. Hallowell v. U. S.,

221 U.S. 317, 31 S. Ct. 587, 55 L. Ed. 750; U. S. v. Waller, 243 U.S. 452, 37 S. Ct. 430, 61 L. Ed. 843 (cited with approval in Begay v. Miller, 70 Ariz. 380, 222 P. 2d 624).

Judgment is reversed as to the levy and sale under attachment and otherwise affirmed.

DUDLEY W. WINDES
Justice

CONCURRING:

FRED C. STRUCKMEYER, JR.
Justice

LEVI S. UDALL
Chief Justice

J. MERCER JOHNSON
Justice

M. T. PHELPS
Justice

APPENDIX B

JUDGMENT BELOW

In the Supreme Court of Arizona, there is no separate document called a judgment. The opinion and the minute entry thereon constitute the judgment. Or, as it is sometimes stated, "The minute entry based on the opinion *is* the judgment."

The minute entry in the present case is as follows:

"IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 6172

"PAUL WILLIAMS AND LORENA WILLIAMS, *Appellants*,

VS.

HUGH LEE DBA GANADO TRADING POST, *Appellee*.

"January 7th, 1958:

This case having been heretofore submitted, and the Court having duly considered same and being now advised in the premises, files its opinion. It is accord-

ingly ORDERED that the judgment of the trial court be affirmed in part and reversed in part: Judgment reversed as to levy and sale under attachment, and otherwise affirmed. Costs in this court to appellants.'"*

APPENDIX C

EXCERPTS FROM THE RECORD SHOWING RAISING OF THE FEDERAL QUESTION

The numbering of the items follows the order set forth in the Petition, p. 5, *supra*.

1(a). Motion to Dismiss Action Because of Lack of Jurisdiction (R. 7):

"I

"Come now the Defendants in the above entitled and numbered action and move this Honorable Court for an order dismissing said action for the reason and upon the grounds that the Defendants are members of the Navajo Tribe of Indians and reside on the Navajo Reservation, where they resided at the time of the commencement of this action; that at the time of the commencement of this action the Plaintiff, as shown by the face of his complaint, was the owner of a trading post known as Ganado Trading post at Ganado, Apache County Arizona.

"II

"That at the time of the commencement of this action the Plaintiff caused to be issued out of the above entitled court, in the above entitled action, a writ of attachment which he caused to be levied on property of the Defendants and property of two of their children; that the property which was levied upon was located at a point called Steamboat Canyon, or in that vicinity, and was wholly on the Navajo Indian Reservation, and that the jurisdiction of any action belonged on said reservation in the Indian courts and not in the Superior Court of Apache County, Arizona, or any other court."

---

* For the amendatory order as to costs, see Appendix F, *infra*, p. A26.

1(b). Statement of Legal Points (R. 9):

"I.

"The defendants state as their legal points in support of their motion to dismiss this action for lack of jurisdiction in the court, that Navajo Indians may not be submitted to the general jurisdiction of a state court by action filed in the state court.

"II

"That the State of Arizona, by its enabling act, agreed that the jurisdiction of Navajo Indians pertaining to their affairs on the reservation may not be made the subject of Civil action in a state court."

2(a). Stipulation of Counsel, etc. (R. 35, 36-37):

"It Is Stipulated by and between counsel for plaintiff and defendants:

• • • •

"4. That the stipulations and agreements of counsel herein specified do not constitute a waiver of the fundamental rights in the premises, nor do such stipulations constitute defendants' recognition of the jurisdiction of this Court or the Sheriff of Apache County to issue a writ of attachment, to levy upon and seize property or to enter orders with respect to the disposition of the same within that portion of the Navajo Reservation situate in Apache County, Arizona."

2(b). Stipulation of Counsel, etc. (R. 47, 48-49):

"Now, Therefore, it is stipulated by and between counsel for plaintiff and defendants:

• • • •

"4. That the agreements and stipulations of counsel herein specified do not constitute a waiver of defendants' right in the premises except to the extent herein provided, nor do such agreement and stipulation constitute a recognition on defendants' part of the jurisdiction of this Court or the Sheriff of Apache County to levy upon and seize property of these defendants when such property is situate within that

portion of the Navajo Reservation situate in Apache County, Arizona."

3(c). Agreed Statement of Facts and Stipulation (R. 72. 74):

"Come now the parties to the above entitled cause and stipulate to the following Agreed Statement of Facts:

* * * *

"II

"The plaintiff and the defendants hereby waive all right to present further evidence upon any issue presented by the plaintiff's Amended Complaint in this case and waive all further right to appear before the Superior Court of the State of Arizona in and for Apache County prior to entry of judgment on said Amended Complaint; provided, however, that it is stipulated and agreed that the defendants do not hereby concede the jurisdiction of said Court in this case, but expressly deny that the Court has or ever had jurisdiction over the persons of the defendants, over their property seized under writ of attachment herein, or over the subject matter of this action."

3. Opinion of the Superior Court (R. 65-70):

* * * *

"The Defendants have filed a motion to dismiss this action on the grounds that the Court does not have jurisdiction of the persons or property of the Defendants for the following reasons:

"1. Indian tribes are 'subjects' of Federal law to the exclusion of State law and entitled to exercise their own inherent rights of self-government so far as they are in accord with Federal law;

"2. That Indian tribes are under the exclusive jurisdiction of the Federal Government and therefore not subject to the laws of the states.

"From the very beginning of our National existence we have been faced with the problems of our relations with Indian tribes who inhabited this continent when we came here. We invaded their territory, and took

lands at a great cost of war and blood-shed. Treaties ensued between our Government and these sovereign Indian nations to promote and establish peace. Sovereign rights of these people were acknowledged within boundaries known as reservations. They then owed no allegiance to or received protection from the respective states and territories wherein they resided. They were dependent upon the Government of the United States for their daily food and political rights, in accordance with the terms and provisions of the respective treaties between each of said Indian tribes and the United States. This was the condition of affairs at the time the leading case cited by the Defendants of Worcester v. Georgia was decided in 1832.

"The real question presented for decision is: Does the Navajo tribe, by virtue of its original tribal sovereignty, have exclusive jurisdiction within the Reservation over its members and their property in accordance with the terms and provisions of the treaties between the United States and the Navajo Tribe? It is generally conceded that the United States under such treaties and its practice of dealing with Indian tribes does have the power by Congressional enactment to govern the Navajo Indians in accordance therewith. What then, has been done by Congress and the Government, if anything, to change the original status that existed when the United States entered into these treaties with the Navajo Tribe as a sovereign power within the boundaries of its Reservation? There are numerous statutes enacted by Congress relating to this subject, but the primary act which to my mind completely destroys the conception of two independent nations living together under and according to the terms of a treaty signed by them, is the granting by the United States to all Indians the great and extensive right of citizenship. Can it be said that after such an enactment Indians still maintain their sovereign right to self-government with their primary allegiance to that government? Manifestly not. They were not required to go through the steps of naturalization and formally take the oath of allegiance as therein provided. This sweeping enact-

ment bestowed upon them all the rights of citizenship. Did not this enactment likewise require obligations of citizenship?

"The State of Arizona has responded to this congressional enactment and through its Courts have determined:

"1. That all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the State and that the exception set forth in our Enabling Act applies to Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the State of Arizona;

"2. That Indians are qualified to serve as jurors, they are competent witnesses in judicial proceedings, may hold and operate a certificate of convenience and necessity as a common carrier, sue in their own right in the State Courts, and that they are citizens and have the right to vote.

"It seems to me that the decisions of our own Supreme Court are not fully and completely consistent in defining and establishing the status of the Indian tribes in Arizona. On the one hand the Court has extended to them all of the rights above enumerated as citizens of the United States and the State of Arizona. On the other hand the Supreme Court has upheld their inherent limited powers of self-government and generally speaking not subject to State law. To my mind these two conceptions of the status of Indians cannot be harmonized. No man can serve two masters, nor bear allegiance to two independent nations or communities. As citizens of Arizona they have the right and do participate in making the laws and it is axiomatic that those who make the laws must obey them in a democracy. I do not believe that the framers of our constitution of the United States and of the State of Arizona ever intended to grant suffrage to persons who were under no obligations to obey the laws enacted as a result of such grant. It is my opinion that Congress intended citizenship of the United States to attach at the time the Indians become subject to the laws of the State or territory in

which they reside. If that be true, then it must follow as the night the day that the Navajo Indians who have been declared to live within Arizona, as citizens of Arizona, are subject to the laws of Arizona. There is, of course, a limitation to this sweeping statement: Lands upon which they reside are held in trust for them by the Government and those who deal with these people must do so under regulations of Congress and its duly appointed agents. This is done because in a sense they are minors and need some care and protection in their dealings. This does not mean that each transaction must be okayed by some high authority, but the granting of a license is a grant of authority to consummate transactions for which such license is granted. This relationship in a sense is a limited guardianship or tutorage relationship, whereby these Indians are being integrated into our political, social, and economic structure. We acknowledge their jurisdiction in tribal courts to school them in their rights of self-government and jurisprudence in order that they may more fully assume the duties of citizenship. The source of the power for these courts does not rest in its inherent natural powers retained from its original sovereignty, but rather permitted in this great democracy of ours for their schooling and for their education. It is my opinion that the grant of citizenship by the Government to the Navajo Indians and accepted by the State of Arizona has emancipated the Navajo Indians in all respects not expressly excluded by the Congress of the United States, such as the punishment of certain specific crimes and taxation.

"To my mind the great weight of Arizona's decisions support the proposition that the Navajo Indians are citizens of the United States and of the State of Arizona, and are subject to the laws of such State, except insofar as they are not in conflict with express reservations controlled by the Congress of the United States. Therefore, this Court does have jurisdiction of this case and the Plaintiff cannot be forced to try this matter before a tribal court, which does not have exclusive jurisdiction hereof."

4. Statement of Points To Be Relied Upon on Appeal (R. 85):

* * * *

"The points which defendants will rely on are as follows:

"1. That the Court had no jurisdiction over the persons of the defendants, because they are Navajo Indians and service of summons was made on the Navajo Indian Reservation.

"2. That the Court had no jurisdiction over the subject matter of the action, because trading with Indians on the Navajo Indian Reservation is governed exclusively by Federal Laws and Federal Laws provide that debts of Indians arising out of such trade are unenforceable.

"3. That the Court had no jurisdiction over the property seized under Writ of Attachment, for the reason that it was the property of Navajo Indians and was seized and levied upon on the Navajo Indian Reservation."

* * * *

APPENDIX D

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

1. The Constitution of the United States provides, Art. I, Sec. 8, Cl. 3:

"The Congress shall have Power * * *

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

2. The Constitution of the State of Arizona provides, in pertinent part:

"ARTICLE 20

"ORDINANCE

"The following ordinance shall be inviolable without the consent of the United States and the people of this state:

* * * *

"Fourth. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the congress of the United States."

3. Section 1 of the Act of Sept. 13, 1950, c. 947, 64 Stat. 845, 25 U.S.C. § 233; is as follows:

"§ 233. Jurisdiction of New York State courts in civil actions

"The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State: *Provided*, That the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment prior to September 13, 1952, those tribal laws and customs which they desire to preserve, which, on certification to the Secretary of the Interior by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue, but nothing herein contained shall be construed to prevent such courts from recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts: *Provided further*, That nothing in this section shall be construed to require any such tribe or the members thereof to obtain fish and game licenses from the State of New York for the exercise of any hunting and fishing rights provided

for such Indians under any agreement, treaty, or custom: *Provided further*, That nothing herein contained shall be construed as subjecting the lands within any Indian reservation in the State of New York to taxation for State or local purposes, nor as subjecting any such lands, or any Federal or State annuity in favor of Indians or Indian tribes, to execution on any judgment rendered in the State courts, except in the enforcement of a judgment in a suit by one tribal member against another in the matter of the use or possession of land: *And provided further*, That nothing herein contained shall be construed as authorizing the alienation from any Indian nation, tribe, or band of Indians of any lands within any Indian reservation in the State of New York: *Provided further*, That nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to September 13, 1952."

4. Section 1 of the Act of March 3, 1901, c. 832, 31 Stat. 1066, as amended, 25 U.S.C. § 262, is as follows:

"§ 262. Persons permitted to trade with Indians. Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians."

5. Section 1360 of 28 U.S.C., as added by Sec. 4 of the Act of Aug. 15, 1953, c. 505, 67 Stat. 588, 589, and subsequently amended by Sec. 2 of the Act of Aug. 24, 1954, c. 910, 68 Stat. 795, is as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	"Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or com-

munity in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

6. Sections 6 and 7 of the Act of Aug. 15, 1953, c. 505, 67 Stat. 588, 590, are as follows:

"Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

"Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall by affirmative legislative action, obligate and bind the State to assumption thereof."

7. 25 CFR 277.13 is as follows:

"25 CFR 277.13. *Trade confined to licensed premises.* All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent."

8. 25 CFR 277.17 is as follows:

"277.17. *Credit at trader's risk.* A trader may extend credit to Indians, but such credit will be at the trader's own risk. All payments to Indians for products or labor must be made in lawful United States

money or in credit on the traders' books at the option of the Indian. Receipt must be given Indians for all articles they have sold to traders and on which they have requested book credit. These receipts must show the following information: (a) the date the transaction was made, (b) the amount paid the Indian, and (c) a description of the article or articles sold. All receipts issued by the trader for Indian products must be recorded in the traders' books in such a manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed."

APPENDIX E

VETO OF 1949 NAVAJO-HOPI REHABILITATION BILL BECAUSE OF JURISDICTIONAL FEATURE

1. Section 9 of S. 1407 (95 Cong. Rec. 13659-13660; Sen. Doc. 119, 81st Cong., 1st sess., p. 6) provided in pertinent part as follows:

> "Sec. 9 From and after the effective date of this Act, all Indians within the tribal or allotted lands of the Navajo and Hopi Reservations shall be subject to the laws of the State wherein such lands are located, and shall have access to the courts of such State for the enforcement of their rights and the redress of wrongs to the same extent and in the same manner as any other citizen thereof; * * * *And provided further*, That nothing in this Act provided shall be deemed to impair the terms and obligations of any existing statute or treaty between the United States Government and the said Indians, nor take away the jurisdiction now exercised by the Federal Government or the tribes, but in all cases the jurisdiction of the State, the Federal, and the tribal courts shall be concurrent."

2. The text of the President's veto of the foregoing bill (Sen. Doc. 119, 81st Cong., 1st sess., pp. 1-4; 95 Cong. Rec. 14784-14785) was as follows:

"October 17, 1949

"To the Senate of the United States:

"I return herewith, without my approval, the enrolled bill (S. 1407) to promote the rehabilitation of the Navajo and Hopi Tribes of Indians and the better utilization of the resources of the Navajo and Hopi Indian Reservations, and for other purposes.

"The principal objective of this bill is the establishment of a ten-year program of capital and other improvements for the benefit and rehabilitation of the Navajo and Hopi Tribes of Indians. Appropriations would be authorized for this purpose totaling $88,570,000. Among the principal program goals specified and the amounts provided therefor would be: roads and trails, $20 million; school buildings and equipment, and other educational measure, $25 million; soil and water conservation and range improvement work, $10 million; and completion and extension of existing irrigation projects, and completion of the investigation to determine the feasibility of the proposed San Juan-Shiprock irrigation project, $9 million.

"I have withheld my approval with reluctance and only after the most careful consideration of all the provisions of S. 1407. The bill contains many meritorious features. In fact, its only objectionable provisions are those of section 9 which, with some qualifications, extend State civil and criminal laws and court jurisdiction to the Navajo-Hopi Reservations which are now under Federal and tribal laws and courts. Section 9 is heavily weighted with possibilities of grave injury to the very people who are intended to be the beneficiaries of the bill. Its many and serious defects outweigh, in my judgment, the merits of the rest of the bill.

"In the first place, the meaning of section 9 is obscure. While it seeks to subject the Navajo and Hopi Indians to the civil and criminal laws of the States where their reservations are situated, in certain circumstances and under certain conditions, the details of these circumstances and conditions cannot be determined, with any assurance of legal correctness, from

the language of section 9. For example, the right to inherit personal property, such as cattle, sheep, tools and utensils, is a matter of vital concern to the Navajo and Hopi Indians, as it is to other human beings. The descent of this property upon death is a matter which is now governed by their tribal practices and customs. Section 9 might be construed as abrogating these practices and customs at one fell swoop and imposing upon these Indians a system governing the descent and distribution of personal property which they neither want nor understand. Another matter of vital concern to the Navajo and Hopi Indians is their water rights, since they live in an arid country where water is the most precious of all natural resources. The jurisdiction to adjudicate, protect and enforce these water rights is now vested in the Federal courts where Indian rights are assured of full protection. Section 9 might be construed as transferring plenary power over Indian water rights to the State courts where there is much less assurance of protection for Indian rights, or it might be construed as leaving the existing Federal jurisdiction substantially unimpaired. These two illustrations are far from exhaustive, but they reveal quite plainly that the bill contains serious threats to the basic rights of these Indians, and at best would create a series of legal tangles which only years of expensive litigation could unravel. In the interim, many valuable interests might be lost and much irreparable injury suffered by the Navajo and Hopi peoples.

"A second major objection to section 9 is that its avowed purpose of accomplishing a broad-scale extension of State laws to the Navajo and Hopi reservations is in conflict with one of the fundamental principles of Indian law accepted by our Nation, namely, the principle of respect for tribal self-determination in matters of local government. The Congress and the executive branch have repeatedly recognized that so long as Indian communities wished to maintain, and were prepared to maintain, their own political and social institutions, they should not be forced to do otherwise. One of the most liberal self-government clauses ever written for an Indian tribe appears in section 6 of

the enrolled bill. That section declares that the Navajo people shall have 'the right to adopt a tribal constitution', which 'may provide for the exercise by the Navajo Tribe of any powers vested in the tribe or any organ thereof by existing law, together with such addition powers as the members of the tribe may, with the approval of the Secretary of Interior, deem proper to include therein', and which 'shall authorize the fullest possible participation of the Navajos in the administration of their affairs'. It would be inconsistent to enact into law section 9 concurrently with section 6. If either is to be accepted as meaning what it says, the other must be viewed as mainly rhetoric.

"Statutes have, of course, been enacted from time to time extending State criminal or civil laws to particular Indian communities. Primarily, these statutes dealt with comparatively small groups, the members of which through long association with neighboring whites, had reached the state where they were prepared to and wished to be governed by State and local law. The Navajo and Hopi Tribes are not in this category. They are, indeed, the Indians who are probably least prepared for such a major change.

"Ultimate acceptance of State jurisdiction is a logical consequence of our policy of assisting the Indians to develop their natural talents and physical resources in ways that will enable them to participate fully in our free, but vigorously competitive, society. In the long run, this process of adjustment to our culture can be expected to result in the complete merger of all Indian groups into the general body of our population. Yet the desirability of this result is no reason for compelling the Navajos and Hopis to accept legal integration long before they have been prepared for such a consequence through the orderly course of social and economic integration. Premature steps for tribal dissolution have invariably revealed that the process of cultural adjustment cannot be hastened, and may be retarded, by attempts at legal compulsion. For many years more the lives of the Navajo and Hopi peoples will continue to be governed by the isolation of the country where they live, the facts that four-fifths of them cannot speak English and that the

majority of their children have never been to school, the primitive background of their social concepts, the limitations of their economic resources, and other circumstances which tend to make their tribal governments a necessary instrument for their continued progress in civilization. It would be unjust and unwise to compel them to abide by State laws written to fill other needs than theirs.

"In reaching my decision to veto S. 1407, I have been greatly influenced by the attitude of the Navajo Indians toward the bill. The Navajo Tribe includes about 65,000 of the approximately 70,000 Indians affected by S. 1407. They greatly favor the long-range rehabilitation program which the bill proposes. But much as they favor the constructive provisions of the bill, they fear section 9 more. This is indicated by the fact that a meeting held on October 13, 1949, after final Congressional action on the bill, the Navajo Tribal Council, the Tribe's governing body, adopted a resolution urging that I veto S. 1407.

"In withholding approval from S. 1407, I am glad, to note that the principal feature of that measure, the ten-year program of capital improvements provided for in section 1, can be put into effect through normal appropriation procedures. Expenditures for substantially all of the purposes listed in section 1 are authorized by existing laws relating to Indian affairs. The purpose in proposing a special authorization for the ten-year program was to afford the Congress an opportunity to review that program as a whole before appropriation estimates were submitted for the individual items. The Congress, by its action on S. 1407, has now manifested its view that the capital improvements in question should be undertaken at once and prosecuted speedily to completion. Accordingly, I plan to include in the budget for the fiscal year 1951 appropriation estimates that will provide for initiation of the ten-year program. Since statutory authorization for almost all of these items already exists, the failure of S. 1407 to become law will not interpose a legal bar to the appropriation of the necessary funds, although it will result in the loss of some incidental features of S. 1407 that would have been of value to

the Indians. I would, of course, be glad to approve a bill that incorporated these features and the other provisions of S. 1407, without the objectionable provisions of section 9, should the Congress see fit to pass such a measure.

"HARRY S. TRUMAN.

"THE WHITE HOUSE,

"October 17, 1949."

APPENDIX F

AMENDED JUDGMENT AS TO COSTS

On February 13, 1958, the Supreme Court of Arizona entered the following supplementary order in the present case:

"Appellant having filed a statement of costs, and appellee having made objection thereto, the matter was considered. It appears that we inadvertently neglected to state in the decision rendered that each party was to bear their own costs. It is therefore ORDERED that no costs be allowed appellant."